UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

EVERGREEN RECYCLING OF CORONA,
a subsidiary of TULLY ENVIRONMENTAL, INC.
Employerl

and

LOCAL 175, UNITED PLANT AND
PRODUCTION WORKERS Case No. 29-RC-10357
Petitioner2

and

BUILDING, CONCRETE, EXCAVATING
AND COMMON LABORERS, LOCAL 731,
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO
Intervenor3

DECISION AND DIRECTION OF ELECTION

Evergreen Recycling of Corona, a subsidiary of Tully Environmental, Inc. (the Employer) is engaged in environmental and waste management, including breaking down and recycling debris such as concrete from construction sites. Local 175, United Plant and Production Workers (the Petitioner) filed a petition under Section 9(c) of the National

1 An amended petition was filed on May 5,2005. The Employer's name appears herein as further amended by the parties, in a stipulation attached hereto as Board Exhibit 10(a), (b) and (c). The amendment's effect on the timeliness of the petition is discussed in detail below.

2 The Petitioner's name appears as amended at the hearing (Bd. Ex. 2).

3 Laborers Local 731 's intervention is based on its status as the recognized collective bargaining representative of the petitioned-for employees.

Labor Relations Act on April 21, 2005,4 seeking to represent certain employees of the Employer, which it erroneously named as "Evergreen Recycling Products, Inc.," another company owned by the same family at the same mailing address. Another union, Building, Concrete, Excavating and Common Laborers, Local 731, Laborers' International Union of North America (the Intervenor) has been the recognized collective bargaining representative of the employees at Evergreen Recycling of Corona. There is no dispute that the original petition was filed within the relevant "open" period, between 90 and 60 days before the relevant collective bargaining agreement was scheduled to expire on June 30.5 However, the Petitioner amended its petition to name the correct employer on May 5, during the 60-day "insulated" period immediately preceding the contract's expiration. The Employer and the Intervenor contend that the amended petition naming the correct employer was not timely filed, and must therefore be dismissed.

During the hearing, the parties stipulated that the Intervenor is a labor organization as defined in Section 2(5) of the Act. However, the Intervenor declined to stipulate to the Petitioner's status as a labor organization under Section 2(5).

Thus, a hearing was held before Sharon Chau, a hearing officer of the National Labor Relations Board, on two issues: the timeliness of the amended petition, and the Petitioner's status as a labor organization.

4 All dates hereinafter are in 2005, unless otherwise indicated.

5 Leonard Wholesale Meats, 136 NLRB 1000 (1962). The Employer had a collective bargaining agreement with Local 1175, Laborers International Union of North America (LIUNA), effective from July 1,2002, to June 30, 2005. *See* Bd. Ex. 3. Some time after the contract was executed in 2002, Local 1175 LIUNA merged with Local 731 LIUNA (the Intervenor herein). There is no dispute that the Employer recognized Local 731 after the two locals merged.

As discussed in more detail below, I find that Evergreen Recycling of Corona had sufficient notice of the petition during the open period to render the filing timely. I also find that the Petitioner is a labor organization as defined in Section 2(5).

Timeliness of the petition. as amended

The record indicates that the Employer in this case, Evergreen Recycling of Corona, a subsidiary of Tully Environmental, Inc., is engaged in waste management, including breaking down and recycling debris from construction sites. It has an office located at 127-50 Northern Boulevard, Flushing, New York, the same office for other construction and related companies owned by various members of the Tully family. It employs a total of approximately 200 employees. The Intervenor has represented a unit of approximately 37 employees employed at the Employer's plant located in Corona, New York, where they actually crush and recycle the construction debris such as concrete.

Evergreen Recycling Products, Inc., is another company with the same office address. It appears to be owned by the same Tully family, although the record does contain specific evidence regarding ownership.6 However, it is a much smaller company, employing only 15 employees. It is engaged in recycling manure and hay from horse race tracks in the area. It has no collective bargaining relationship with the Intervenor or any other labor organization. The record does not indicate the location of Evergreen Recycling Products' plant.

6 The Petitioner's witness, Richard Tomaszewski, Jr., who works for another company affiliated with the Tully construction companies, Willets Point Asphalt Corporation, testified that four brothers from the Tully family work at Northern Boulevard office in Flushing: Peter, James, Thomas and Ken Jr. Tomaszewski testified that Ken Tully, Jr., said he Was a "principal" in both Evergreen Recycling Products and Evergreen Recycling of Corona.

As noted above, the original petition was filed on April 21, listing the Employer incorrectly as "Evergreen Recycling Products, Inc." Nevertheless, the original petition (1) correctly identified the employer as a manufacturer of "sand, gravel and crushed stone," (2) listed a bargaining unit of approximately 37 employees, (3) indicated that Local 731 LIUNA also had a "representative interest" in the same bargaining unit, and (4) indicated that a contract covering those employees was scheduled to expire on June 30, 2005. None of these four conditions apply to Evergreen Recycling Products, Inc. Thus, it was obvious that the Petitioner had named the wrong company.

On April 27, a person named Rick Macchiarulo, identified as the controller and "CFO" of Evergreen Recycling Products, Inc., initially submitted to the Region a commerce questionnaire on behalf of Evergreen Recycling Products, Inc. (Board Ex. 4). It indicated a total of only 15 employees.

The next day, on April 28, after speaking to a Board agent, Macchiarulo submitted another commerce questionnaire (Bd. Ex. 5) to the Region, on behalf of the correct employer, stated as "Tully Environmental, Inc., d/b/a Evergreen Recycling of Corona." On that page, Macchiarulo was identified as the CFO. The second questionnaire correctly listed a total of 200 employees, and also stated that the Employer is a member of, or participates in, an "association or other employer group that engages in collective bargaining." Thus, the second questionnaire makes obvious that the Employer knew the petition was intended to apply to Evergreen Recycling of Corona. The second questionnaire was submitted 64 days before the expiration of the relevant collective bargaining agreement on June 30, i.e., during the "open period." The last day of the "open period" was on May 1.

The Petitioner thereafter filed a written amended petition, on May 5, naming "Evergreen Recycling of Corona, Inc." as the employer. Then, during a hearing held on May 12, the petition was further amended to name "Tully Environmental, Inc., d/b/a Evergreen Recycling of Corona" as the Employer (Bd. Ex. 2). Finally, in a post-hearing stipulation signed by all three parties,7 the Employer's name was further amended to "Evergreen Recycling of Corona, a subsidiary of Tully Environmental, Inc." These amendments occurred during the insulated period, during which a petition cannot be filed.

Thus, although the petition was not officially amended until the insulated period, it is obvious from the April 28 commerce questionnaire (Bd. Ex. 5) that the correct Employer (Evergreen Recycling of Corona) had actual notice during the open period that the Petitioner was seeking to represent a unit of its employees.

The Board held in Deluxe Metal Furniture Co., 121 NLRB 995, 1000 at fn. 12 (1958) that the original filing date of a petition (as opposed to the amendment date) is controlling where "the employers and the operations or employees involved were contemplated by or identified with reasonable accuracy in the original petition, or the amendment does not substantially enlarge the character or size of the unit or the number of employees covered."

In Concrete Joists & Products Co., 120 NLRB 1542 (1958), a petitioner filed a petition erroneously naming "Pre-Cast Concrete Joists and Products, Inc." as the employer, during the open period of a 1956-57 contract between the intended employer

7 The stipulation is attached hereto as Board Exhibit IO(a), (b) and (c). Bd. Ex. lO(a) is signed by Aislinn McGuire, attorney for the Employer. Bd. Ex. lO(b) is signed by Anthony Bisceglie, Jr., attorney for the Intervenor, although his signature mistakenly appears on the employer's signature line. Bd. Ex. lO(c) is signed by Eric Chaikin, attorney for the Petitioner.

("Concrete Joists & Products, Inc.") and another union. There were various companies such as "Precast Concrete Products" and "Precast Concrete Co." at the same office address, with two of the same owners and corporate officers (a father and son). In response to the Regional Director's inquiry regarding commerce data, information was submitted on behalf of the correct employer, Concrete Joists & Products.. The petitioner did not file an amended petition until after the incumbent's 1957-58 contract was signed. Nevertheless, the Board held that the timely filing date of the original petition was controlling because that petition was "sufficient to put the Employer on notice that the Petitioner was seeking to represent its employees," and that the "misnomers were of no consequence." Id.. 120 NLRB at 1543 (emphasis added).

Similarly, in U.S. Mattress Corp. et al., 135 NLRB 1150 (1962), there were two companies owned by the Cohen family: "Restyme Products Inc." was a factory manufacturing mattresses and related products, which employed 37 production and maintenance employees, whereas "U.S. Mattress Corp." was primarily a seller and jobber of such products, and employed only 1 maintenance employee at the factory site. (D.S Mattress Corp.'s 12 sales employees worked out of a separate showroom.) When a union filed a petition to represent the production and maintenance employees, it erroneously listed the employer as "U.S. Mattress," although it correctly identified the factory location, the manufacturing operations, and the unit of approximately 35 employees. Nine days later, the petitioner amended its petition to name both Restyme and U.S. Mattress as the employers. However, in the meantime, Arthur Cohen (who was vice president of Restyme and president/treasurer of U.S. Mattress) had signed a contract on

behalf of Restyme with another union, which it claimed was a bar to the amended petition. The Board found that the original filing date of the petition was controlling:

> It is apparent from the contents of the petition that the Petitioner intended to include employees of both corporations in its unit request, as the petition made reference to 35 production and maintenance employees, to the establishment involved as a factory, and to its product as mattresses. Accordingly, we find, under all the circumstances of this case, that service of the original petition on Arthur Cohen, at a time when he was representing both corporations in contract negotiations, constituted notice to both corporations.

Id., 135 NLRB at 1151-2, citing Concrete Joists & Products, *supra.8*

In the instant case, I find that the original filing date is controlling, and that the petition was timely filed during the relevant open period. Even though the Petitioner erroneously listed "Evergreen Recycling Products" as the employer, it contemplated the operations or employees involved with reasonable accuracy, i.e., the larger unit of the Employer's construction-related recycling employees. Deluxe Metal Furniture, *supra.* The original petition was sent to an address where both companies accept mail, and it became immediately obvious to Richard Macchiarulo (who is CFO for both companies) that the petition was intended to refer to Evergreen Recycling of Corona. In fact, as noted above, Macchiarulo submitted commerce information regarding the correct Employer during the open period. Thus, the correct Employer (Evergreen Recycling of Corona) clearly had notice, during the open period, of the Petitioner's intention to represent its

8 It should be noted that the respective employers in Concrete Joists & Products and u.s. Mattress were found to be single employers, whereas the record in this proceeding is insufficient to prove that Evergreen Recycling Products and Evergreen Recycling of Corona are a single employer. Nevertheless, the Board did not rely solely on the single-employer finding in determining that the intended company had sufficient notice. Rather, as explained above, the Board emphasized that the contents of the petition and other circumstances were such that the correct employer had actual, timely notice of the petition covering its petitioned~for employees. In this instant case, I find that Evergreen Recycling of Corona had actual notice of the petition during the open period, as evidenced by the CFO's submission of commerce information during that time, even assuming *arguendo* that it is not a single employer with Evergreen Recycling Products.

unit of approximately 37 recycling-plant employees. Concrete Joists & Products, *supra.* The subsequent amendment of the petition during the insulated period was "of no consequence," id. at 1543. Nor did the amendment substantially enlarge the character or size of the unit, Deluxe Metal Furniture.

Accordingly, I find that the original petition gave timely notice to the Employer of the Petitioner's intent to represent the petitioned-for employees. I therefore deny the Employer's motion to dismiss the petition.

Labor organization status of Petitioner

Section 2(5) of the Act defines a labor organization as:

> any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The Petitioner's secretary/treasurer, Richard Tomaszewski, Jr., testified that the Petitioner exists for the purpose of getting "fair contracts" to improve employees' wages, benefits, hours and other working conditions, and for representing employees in connection with grievances. Tomaszewski further testified that employees participate in the organization by attending meetings and voting for officers. For example, employees participated in an election when Local 175 was formed two years ago. Tomaszewski conceded that Local 175 has not yet entered into any collective bargaining agreements with employers at the time of the hearing.

In short, Tomaszewski's testimony establishes that the Petitioner exists for the purpose of dealing with employers concerning grievances and other terms and conditions

of employment. Employees participate in the Petitioner's organization, for example, by attending meetings and participating in elections for union officers. Thus, the Petitioner clearly meets the broad definition of labor organization in Section 2(5) of the Act. *See also* Alto Plastics Mfg. Corp., 136 NLRB 850 (1962).

The Intervenor claimed that Local 175 is not a labor organization because certain of its participants were involved in a corruption scandal when they were previously employed by Local 1175, LIUNA. Specifically, in an offer of proof in related cases, 9 the Intervenor alleged that former Local 1175 business manager, Fred Clemenza, Jr., who had embezzled money from that union and its benefit funds, was somehow involved in the formation of Local 175. However, the Hearing Officer ruled that such .contentions were irrelevant to Local 175's status as a labor organization, and rejected the offer of proof. The Hearing Officer also refused to admit into evidence certain documents proffered by the Intervenor, including a LIUNA hearing officer's report regarding Fred Clemenza's misconduct (marked for identification as Intervenor Exhibit 1, to be placed in a "rejected" exhibits file). In the instant case, the Hearing Officer likewise refused to admit other documents deemed irrelevant: an attendance sheet for a Local 175 meeting in 2003 (marked for identification as Union Exhibit 1), a LIUNA document regarding a person named Charles Clemenza (marked as Union Exhibit 2) and the Petitioner's LM-4 form for 2003 (marked as Union Exhibit 3).

9 The Petitioner initially filed several petitions for employees at various asphalt and related plants, all of whom were represented by Local 731 (Case Nos. 29-RC-10352, -10354, -10355, -10356, -10357, 10358 and -10359). At that time, the Petitioner sought a multi-employer unit, and the instant case was heard together with six other cases. In a letter dated June 15, 2005, the Petitioner later withdrew its position regarding the multi-employer unit, and indicated its willingness to proceed to elections in a separate unit for each employer. Nevertheless, the parties had agreed to use evidence from these related cases regarding the Petitioner's status as a labor organization.

The Hearing Officer correctly ruled that such questions were irrelevant, and 1 hereby affirm her rulings. Contrary to the Intervenor's contentions, the alleged misconduct of people who may have been involved in forming the Petitioner's organization has no bearing whatsoever on whether the Petitioner is a labor organization as statutorily defined. Even if the facts alleged by the Intervenor were assumed to be true, it would not change the fact that the Petitioner exists for the purpose of dealing with employers and therefore meets Section 2(5)'s broad definition.

As the Board said in Alto Plastics, *supra:*

> [1]t must be remembered that, initially, the Board merely provides the machinery whereby the desires of the employees may be ascertained, and the employees may select a "good" labor organization, a "bad" labor organization, or no labor organization, it being presupposed that employees will intelligently exercise their right to select their bargaining representative. In order to be a labor organization under Section 2(5) of the Act, two things are required: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. If an organization fulfills these two requirements, the fact that it is an ineffectual representative, ... that certain of its officers or representatives may have criminal records, that there are betrayals of the trust and confidence of the membership, or that its funds are stolen or misused, cannot affect the conclusion which the Act then compels us to reach, namely, that the organization is a labor organization within the meaning of the Act.

136 NLRB at 851-2.

Accordingly, 1 find that the Petitioner is a labor organization within the meaning of Section 2(5).

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, including the parties' stipulations and in accordance with the discussion above, 1 conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Evergreen Recycling of Corona, a subsidiary of Tully Environmental Inc., is a domestic corporation with its office located at 127-50 Northern Boulevard, Flushing, New York, and with a plant located in Corona, New York, where it is engaged in environmental and waste management.10 During the past year, which period represents its annual operations generally, the Employer performed services valued in excess of $50,000 directly to entities located outside the State of New York. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner and the Intervenor, both labor organizations, claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent a unit of employees employed at the Employer's plant in Corona, New York, the same unit that has been represented by the

10 As indicated above at fn. 5, the Petitioner initially sought a broader unit, consisting of employees employed by various asphalt plants and related employers, some of whom were parties to the GCA multi-employer contracts. During the hearing, a great deal of discussion and confusion arose, regarding whether these employers were engaged in building and construction, whether the employers' relationship with the Intervenor was based on Section 8(f) or 9(a) of the Act, and whether a multi-employer unit is possible in a construction-industry election. The Petitioner's subsequent withdrawal of its position regarding the multiemployer unit, and its expressed willingness to proceed to elections in separate units for each employer, rendered those issues moot. Nevertheless, it should be noted that employers engaged in waste management are not engaged primarily in building and construction.

Finally, I have administratively determined that the Petitioner has an adequate showing of interest in a separate unit of Evergreen Recycling of Corona employees.

Intervenor. The Petitioner amended its petition to conform the unit description to the description found in Section 3 of the collective bargaining agreement between the Employer and the Intervenor (Bd. Ex. 3). Subsequently, in a post-hearing stipulation, the parties agreed that the bargaining unit as described in the contract, with both the Employer's correct name and the Corona plant's correct address added, is an appropriate unit for the purposes of collective bargaining. (See Bd. Ex. 10(a), (b) and (c) attached hereto.)

Accordingly, I hereby find that the following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time recycling, crushing and block plant employees, employed by Evergreen Recycling of Corona, a subsidiary of Tully Environmental, Inc., at the Evergreen Recycling of Corona's facility located at 35th Avenue & Willets Point Boulevard, Corona, New York, including welders; repair and maintenance men; grease men; forklift, pay loader, platform and hi-lo operators; motor, generator, power equipment and all other yard equipment men; tool room men; and all other employees who handle any material by loading and unloading all trucks, freight cars, barges, boats and ships to docks or to any other of the Employer's property; also employees who perform the testing of all materials, the cubing stock piling, either by hand or by equipment, and employees who perform other miscellaneous skilled and unskilled duties in and around the plants owned and/or operated by the Employer, but excluding office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Local 175, United Plant

and Production Workers, or by the Building, Concrete, Excavating and Common Laborers, Local 731, Laborers' International Union of North America, AFL-CIO, or by neither labor organization. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibilitv

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of gthis Decision, including employees

who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear. Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office election an eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359,361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before August 3, 2005. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570 0001. This request must be received by the Board in Washington by 5 p.m., EST on **August 10, 2005.** The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above~ described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: WWW.nlrb.com.

Dated: July 27,2005.

Alvin Blyer

Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

STIPULATION

The parties stipulate that the following recycling. crushing and block plant employees employed by Evergreen Recyc1ing of Corona. a subsidiary of Tu11y Environmental, Inc., at the Evergreen Recycling of Corona facility constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and. regular part-time recycling, crushing and block plant employees employed by Evergreen Recycling of Corona, a subsidiary of Tu11y environmental, Inc., at the Evergreen Recycling of Corona facility located at 35th Avenue & Willets Point Boulevard, Corona, New York, including welders; repair and maintenance men; grease men; forklift, pay loader, platform and hilo t!!'f;motor, generator, power equipment and all other ytU'd equipment men; men; and aU other employees whu h8l1d1e any material by loading and =;ntoB.g.all trucks, freight cars. barges, beats. and ships to docks or to snyot'her property; Blso$11ployeeg whoperfotm the testing of aU ~terinls. the cubing stockpiling, either by hand or by equipment. and employees who perfonn other miscellaneous skilled and unskiJled duties in and around the p1ants owned and/or operated by the Employel'~ but excluding office clerical atnployees, guards and supervisors as defined in the Act.

0) ("'\J NLRB-REGION RECEIVED

Evergreen Recycling of Corona a
subsidiary of Tully Environmental, Inc.

By 7/25/05 Date

Bui1ding, Concrete Excavating & Common Laborers' Union, Local 731,
Laborers' International Union of North America. AFL-CIO

By Date

Local 175, United Plant and Production Workers

By Date

Board Exhibit 10(a)

STIPULATION

The parties stipulate that the following recycling, crushing and block plant employees employed by Evergreen Recycling of Corona, a subsidiary of TulIy Environmental. Inc., at the Evergreen Recycling of Corona facility constitute a unit appropri.ate for the purpose of collective bargaining within the meaning of Section 9(b} of the Act:

> All full-time and regular part-time recycling. crushing and block plant employees, employed by Evergreen Recycling of Corona, a subsidiary of Tully Environmental, Inc., at the Evergreen Recycling of Corona facility located at 35th Avenue & Willets Point Boulevard, Corona, New York, including welders; repair and maintenance men; grease men; forklift, pay loader, platform and hilo operators; motor, generator, power equipment and all other yard equipment men; tool room men; and all other employees who handle any material by loading and unloading all trucks, freight cars, barges, boats and ships to docks or to any other of the Employer's property; also employees who perform the testing of all materials, the cubing stock piling, either by hand or by equipment, and employees who perform other miscellaneous skilled and unskilled duties in and around the plants owned and or operated by the Employer, but excluding office clerical employees, guards and supervisors as defined in the Act

Corona,
vironmental~
[nc.

. ing, Concrete, Excavat & Common Laborers' Union,
oca1731,Laborers' Jntematio I Union of North America, AFL-CIO

By Date

Local 175, United Plant and Production Workers

By Date

Board Exhibit lO(b)

smULATION

The parties stipulate that tht: fol1owingrccycling, crushing and block plant employees employed by Evergreen Recycling of Corona, a subsidiary of Tully Environmental, Inc., at tbe Evergreen Recycling of Corona facility constitute /l unit appropriate for th~ pUl-pOse of collecti"e 'bargaining within the meaning of Section 9(b) of the Act;

All full-time and TegulCl1' part-time recycling, <'-"rUshing and block plant employees, employed by EVel"green Recycling of CorODa, a subaidiary of Tully Bnviromnental. Inc., at the Evergreen Recycling of Corona facility loc~ted at *35m* A vc.nu£ & WilletS Point Boulevard, Corona, New Yark, including welders; repait' and maintenance men; yeas'" men; forklift, pay loader, platfonn and pi-l0 operalors; motor,gem:mtor. power equipment and all other yard equipment men; tool tootn men; and all other: employees who h..'\rtdle anY1Jlaterial by loading and unloading all tn\Cks, freight car.;;, barges, boats and ships to docks or to iUlY other of the Employer' 5 property; also cmployees wh~) ped'orm the testing of all Bdterials, ~he cubing stock piliug, either by hand or by equipment, and empio~es who perform other miscellaneous skiUed and unskilled duties in and aro1.Uld the plant5 ownedand/or operated by the Employer, but e..cluding office clerical employees, guards and supervisors as defined in the Act.

By

Locall1S, United Plant and Production Workers

Eric B. Chaikin 7/25/05
By Counsel Date

Board Exhibit lO(c)